Ahmad bin Saman v Kerajaan Negeri Kedah

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO-01-12 OF 1998

MOHD NOOR AHMAD, RICHARD MALANJUM AND ARIFIN ZAKARIA JJCA

18 SEPTEMBER 2003

Land Law *— Acquisition of land — Purpose for which land needed — Public Purpose — Whether acquisition for 'tourist industry' fell within the definition of 'public purpose' — Land Acquisition Act 1968 ss 3, 8*

This is an appeal against the decision of the judge in dismissing the appellant's application for a declaration that a gazette notification published in and all actions taken thereunder be declared null and void in so far as it relates to the acquisition of the appellant's land ('the land'). The appellant was the registered owner of the land. The respondent sought to acquire the land, stating that it was for the 'tourist industry'. The issue for consideration in this appeal is whether the acquisition of land for the purposes of 'tourist industry' was within the definition of 'public purpose' as found in s 3 of the Land Acquisition Act 1960 ('the Act).

Held, allowing the appeal:

(1) The power of the State Authority to acquire land is conferred by s 3 of the Act. The purpose for which land may be acquired is enumerated in the same section. Having been satisfied that land is needed for the purposes referred to in s 3 of the Act, a notification if Form A shall be published followed by a declaration in Form D pursuant to s 8 of the Act (see p 707H–I).

(2) The tourism industry is an important industry to the country and more so to the island of Langkawi. The industry has brought a lot of benefits to the people of Langkawi in terms of employment, infrastructure, utilities, amenities and the like. The acquisition in the present case therefore falls squarely within the expression 'public purpose' as used in s 3 of the Act (see p 710D).

[Bahasa Malaysia summary

Ini adalah rayuan terhadap keputusan hakim di dalam menolak permohonan perayu untuk akuan bahawa pemberitahuan warta yang diterbitkan di dalam dan segala tindakan yang diambil di bawah diisytiharkan batal dan tak sah sejauh mana yang berkenaan pengambilan tanah perayu ('tanah itu'). Perayu adalah pemunya berdaftar tanah itu. Responden cuba mengambil tanah itu dengan menyatakan bahawa ia adalah untuk 'tourist industry'. Isu yang perlu ditimbangkan di dalam rayuan ini adalah sama ada pengambilan tanah untuk tujuan 'tourist industry' adalah di dalam tafsiran 'public purpose' seperti di dalam s 3 Akta Pengambilan Tanah 1960 ('Akta itu').

Diputuskan, membenarkan rayuan itu,

(1) Kuasa pihak berkuasa negeri untuk mengambil tanah diberi oleh s 3 Akta itu. Alasan untuk mengambil tanah itu terdapat di dalam seksyen sama. Setelah puas hati bahawa tanah itu diperlukan untuk tujuan di dalam s 3 Akta itu, pemberitahuan di dalam Borang A mesti diterbitkan diikut dengan perisytiharan di dalam Borang D menurut s 8 Akta itu (lihat ms 707H–I).

(2) Industri pelancongan adalah industri yang penting kepada negara dan lebih lagi kepada pulau Langkawi. Industri itu telah membawa banyak faedah kepada penduduk Langkawi daripada segi pekerjaan, infrasruktur, kemudahan awam dan lain lagi. Pengambilan di dalam kes ini jatuh di dalam ungkapan 'public purpose' seperti yang digunakan di dalam s 3 Akta itu (lihat ms 710D).]

Notes

For cases on purpose for which land needed in acquisition of land, see 8 *Mallal's Digest* (4th Ed, 2001 Reissue) paras 1698–1701.

Cases referred to

Aflatoon v Lt Governor of Delhi AIR 1974 SC 2077, (1975) 4 SCC 369 (refd)

Arnold Rodricks v. State of Maharashiton (1966) 3 SCR 855, AIR 1966 SC 1788 (refd)

Madhya Pradesh Housing Board v Mohd Shafi (1992) 2 SCC 168 (refd)

Pemungut Hasil Tanah, Daerah Barat Daya, Pulau Pinang v Ong Gaik Kee [1983] 2 MLJ 35 (refd)

S Kulasingam & Anor v. Commissioner of Lands, Federal Territory & Ors [1932] 1 MLJ 204 (refd)

Syed Omar bin Abdul Rahman Taha Alsagoff & Anor v The Government of the State of Johore [1979] 1 MLJ 49 (refd)

Legislation referred to

Land Acquisition Act 1968 ss 3(a), 8

Land Acquisition Act 1894 [India] s 4(1), (2), 5A

Jessica Binwani (*A Thaivanai* with her) (*Meena Raman & Partners*) for the appellant.

Ahmad Zakhi (Senior Federal Counsel) for the respondent

Appeal from: Saman Pemula No 24–84–93 (High Court, Alor Setar)

Arifin Zakaria JCA (delivering judgment of the court):

Background facts

1 This is an appeal against the decision of the learned judge in dismissing the appellant's (the applicant in the court below) application, inter alia, for a declaration that gazette notification published in Warta Kerajaan Negeri Kedah No 3 (Jilid 33) dated 8 February 1990 and all actions taken thereunder be declared null and void in so far as it relates to the acquisition of the appellant's land known as H S (M) No 43/84, Padang Matsirat, Telaga Tujuh, Langkawi, Kedah ('the said land'). This appeal came up before us on 20 May 2003 and having heard submissions of counsel for the appellant and the learned senior federal counsel appearing for the respondent we dismissed the appeal with costs. We now give our reasons.

2 The facts are not in dispute and are comprehensively set out in the judgment of the learned judge which are briefly as follows. The appellant was the registered owner of the said land. The respondent (defendant in the court below) sought to acquire the land for the purpose as stated in the declaration made pursuant to s 8 of the Land Acquisition Act 1968 ('the Act'). The material part of the declaration reads as follows:

> It is hereby declared that the particular lands and areas specified in the Schedule hereto are needed for the following purpose: Land Acquisition for Tourist Industry at Telok Burau, Mukim Padang Matsirat, District of Langkawi.

After an inquiry the Land Administrator made an award of RM46,850 in favour of the appellant as compensation for the land. The appellant objected to the acquisition and the money was then deposited in court.

3 Before the learned judge two issues were advanced in support of the appellant's application namely:

(i) abuse of statutory power and/or the purpose of the acquisition does not come within the scope of s 3 of the Act;

(ii) violation of constitutional protection given to Malay Reservation Land.

Before us the appellant challenges the acquisition on the sole ground that the acquisition falls outside the scope of s 3 of the Act and for that reason it is illegal and null and void.

The law

4 The power of State Authority to acquire land is conferred by s 3 of the Act. The purpose for which land may be acquired is enumerated in the same section. Having being satisfied that land is needed for the purposes referred to in s 3 a notification in Form A shall be published. This is to be followed by a declaration in Form D pursuant to s 8 of the Act. Section 8(3) of the Act provides:

A declaration in Form D shall be conclusive evidence that all the scheduled land referred to therein is needed for the purpose specified therein.

5 The above provision came for consideration of the Privy Council in *Syed Omar bin Abdul Rahman Taha Alsagoff & Anor v The Government of the State of Johore* [1979] 1 MLJ 49, there the Privy Council observed at p 50:

> Section 8(3), as has been said, provides that the Declaration shall be conclusive evidence that all the scheduled land is needed for the purpose specified therein. While it may be possible to treat a Declaration made pursuant to this subsection as a nullity if it be shown that the acquiring authority has misconstrued its statutory powers (see *Anisminic v Foreign Compensation Commission* [1969] 2 AC 147) or that the purpose stated in the Declaration does not come within s 3, in the absence of bad faith, which in the instant case is negatived by concurrent findings of fact in the courts below, this subsection renders it not possible to challenge its validity by asserting that some of the land to which it relates is not needed for the purposes stated or that the land is in fact wanted for purposes other than those specified. Consequently the fact that the lands listed in the Schedule amounted to some 5,700 acres when the total area of the State Development Officer's original requirements was 2,000 acres does not help the appellants, nor can it really be contended that the purposes stated in the Declaration do not come within s 3.

In *Pemungut Hasil Tanah, Daerah Barat Daya, Pulau Pinang v Ong Gaik Kee* [1983] 2 MLJ 35 Salleh Abas CJ (Malaya) (as he then was) at p 37 said:

> We think that it is sufficient to decide this appeal on the basis of a simpler question, i.e. whether or not in view of the long delay resulting in an injustice to the land owner the acquisition was done in accordance with the law (the Land Acquisition Act). Only in the circumstance that it is not done in accordance with the Act can we say that the acquisition is contrary to the requirement of clause (1) of Article 13 of the Federal Constitution which requires that to be lawful every deprivation of property must be done in accordance with law.
>
> Every exercise of statutory power must not only be in conformity with the express words of the Statute but above all must also comply with certain implied legal requirements. The court has always viewed its exercise as an abuse and therefore treats it as illegal where the exercise is done for an inadmissible purpose or on irrelevant grounds or without regard to relevant considerations or with gross unreasonableness (*de Smith's*, 4lh Ed, p 323, and *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223).

Thus, it would appear that the acquisition may be challenged on any of the following grounds:

(a) that the acquiring authority has misconstrued the statutory powers;

(b) that the purpose stated in the Declaration does not come within s 3;

(c) where it can be shown that the acquiring authority has acted in bad faith; or

(d) that the acquiring authority has acted contrary to the law.

6 Section 3 of the Act as it stood at the material time reads:

> The State Authority may acquire any land which is needed–
>
> (a) for any public purpose;
>
> (b) by any person or corporation for any purpose which in the opinion of the State Authority is beneficial to the economic development of Malaysia or any part thereof or to the public generally or any class of the public; or
>
> (c) for the purpose of mining or for residential, agricultural, commercial or industrial purposes.

Findings of this court

7 The learned counsel for the appellant contended that if at all the declaration in this case is to come within s 3 it will have to come under para (a) of that section. However, she submitted 'Tourist Industry' as stated in the declaration could not fall within the expression 'public purpose' in para (a) because it is not clear how the public is going to benefit from it. She said, for the acquisition to fall within para (a) it must be shown that the acquisition is in the public interest or for the benefit of the public or an identifiable sector thereof. In this case she submitted the acquisition fails to satisfy the above criteria. Secondly, she contended that the declaration in this case is vague as it does not show the real purpose for which the said land is acquired, for that reason the declaration is invalid. She relied on the Indian case of *Madhya Pradesh Housing Board v Mohd Shafi* (1992) 2 SCC 168 in support of this contention. In that case Dr AS Anand J at p 175 stated thus:

> Apart from the defect in the impugned notification, as noticed above, we find that even the 'public purpose' which has been mentioned in the schedule to the notification as 'residential' is hopelessly vague and conveys no idea about the purpose of acquisition rendering the notification as invalid in law. There is no indication as to what type of residential accommodation was proposed or for whom or any other details. The State cannot acquire the land of a citizen for building some residence for another, unless the same is in 'public interest' or for the benefit of the 'public' or an identifiable section thereof. In the absence of the details about the alleged 'public purpose' for which the land was sought to be acquired, no one could comprehend as to why the land was being acquired and therefore was prevented from taking any further steps in the matter.

8 It is submitted on behalf of the respondent that the purpose for which the land is being acquired is within the expression 'public purpose' as provided in para (a) of s 3. The learned judge in his ground of judgment agreed with the submission of the respondent. This has found expression in the following passage of his judgment:

> The land acquired in this case is situated in Langkawi and locally or internationally Langkawi is well known as a tourist destination. The charm of

its resorts and beaches had captivated tourists all over the world. As a fast developing tourist destination it has contributed to the bulk of the island's income. There is no doubt that the tourist industry is the prime revenue earner for the island. As stated by the learned Legal Advisor, tourism, has become an important industry for Malaysia and in this respect Langkawi has become one of the main foreign exchange earners for the country. In my considered opinion, there is no doubt that tourism has played a major role in the economic development of the country. As a result it has brought a lot of benefits to the people of Langkawi, in terms of better infrastructures, utilities, amenities and at the same time has generated a lot of employment opportunities for the general public.

Based on the above authorities and reasons I see no reason to disagree with the learned Legal Advisor's contention that tourist industry is indeed a public purpose within the ambit of s 3 of the Act. The fact is further enhanced by the amendment of s 3 of the Act by Act A804. Therefore the plaintiff's contention that 'tourist industry' is not a public purpose under s 3 must fail.

9 In coming to his decision the learned judge seems to lay emphasis on the fact that the tourism industry is an important industry to the country and more so to the island of Langkawi. We think his Lordship was right, for it cannot be denied that the industry has brought a lot of benefits to the people of Langkawi in terms of employment, infrastructure, utilities, amenities and the like. We are of the view that the correct test to be applied in determining the meaning of 'public purpose' is as suggested by his Lordship Hashim Yeop A Sani J in *S Kulasingam & Anor v. Commissioner of Lands, Federal Territory & Ors* [1932] 1 MLJ 204, at p 208:

The expression 'public purpose' is incapable of a precise definition. No one in fact has attempted to define it successfully. What all the textbooks have done is to suggest the tests to be applied in determining whether a purpose is a public purpose. Various tests have been suggested. But in my view it is still best to employ a simple commonsense test, that is, to see whether the purpose serves the general interest of the community.

10 Applying the test as propounded in the above case we agree with the finding of the learned judge and the reasons given by him in holding that the acquisition in present ease fell squarely within the expression 'public purpose' as used in para (a) of s 3 of the Act.

11 On the contention of the learned counsel for the appellant that the expression 'tourism industry', as stated in the declaration is vague and does not convey the real purpose for which the land is acquired, our answer to this is that, this issue needs to be considered in the light of our Land Acquisition Act. We are of the view that the case of *Madhya Pradesh Housing Board* was decided based on the particular provision in s 4 of the Indian Land Acquisition Act 1894 which is somewhat different from the provision in s 3 of our Act. In *Aflatoon v Lt Governor of Delhi* AIR 1974 SC 2077, (1975) 4 SCC 369 it was expressly noted that the notification under s 4(1) must specify the particular purpose for which the land is needed or likely to be needed as otherwise, the matters specified in sub-s (2) of s 4 cannot be

carried out. This is because under sub-s (2) of s 4 of the Indian Act the acquiring authority is required to ascertain whether the land is adapted for such purpose as stated in the notification. There is no similar provision in our Act. In any event in *Aflatoon* the Indian Supreme Court held, inter alia, the question whether the purpose specified in a notification under s 4 is sufficient to enable an objection to be filed under s 5A would depend upon the facts and circumstances of each case. In that case the court held that the notification stating that an area of 30,070 acres of land was needed for a public purpose, viz, 'the planned development of Delhi' was valid. Similarly in *Arnold Rodricks v. State of Maharashiton* (1966) 3 SCR 855, AIR 1966 SC 1788 the SC again held that a notification under s 4 of the Act which stated that the land was needed for 'Development and utilization of the said lands as industrial and residential areas' was sufficient specification of public purpose. Similarly we hold that the declaration in this case that the land is needed for 'Tourist Industry at Telok Burau' is a sufficient specification for the purpose of s 3(a) of the Act. In our view it is a clear statement of the purpose for which the land is being acquired.

12 For those reasons we also rejected the appellant's contention that the acquisition herein ought to be struck out on the ground that the declaration is vague.

Conclusion.

13 For the above reasons we find that the appeal is without merit and is dismissed with costs. Deposit to be paid to the respondent on account of taxed costs.

Appeal allowed.

Reported by Mariette Peters-Goh